

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re J.D., et al., Persons Coming Under the  
Juvenile Court Law.

B212167

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

(Los Angeles County  
Super. Ct. No. CK74713)

Plaintiff and Respondent,

v.

A.D.,

Defendant and Appellant.

APPEAL from orders of the Superior Court of Los Angeles County.

Daniel Zeke Zeidler, Judge. Affirmed.

Anna L. Ollinger, under appointment by the Court of Appeal, for Defendant and Appellant.

Richard E. Kalunian, Acting County Counsel, James M. Owens, Assistant County Counsel, and Byron G. Shibata, Associate County Counsel, for Plaintiff and Respondent.

---

A.D. (Father) appeals from the juvenile court's orders finding jurisdiction and authorizing reunification services with respect to his three children. (Welf. & Inst. Code, § 300, subds. (a) & (b).)<sup>1</sup> Father contends the court erred when it found his history of domestic violence against S.D. (Mother) caused a current substantial risk of serious physical harm to the children. He argues he and Mother are divorced and he has not been violent toward her since 2000, and past violence presents no present risk to the children. We hold the issue need not be addressed, because other uncontested findings support the court's jurisdiction. Nevertheless addressing the issue, we hold the court's finding that spousal violence presented a risk to the children was not supported by substantial evidence.

The orders are affirmed.

## **FACTS AND PROCEEDINGS BELOW**

After marrying in 1990, Father and Mother had three sons: L.D. (born in 1991), J.D. (born in 1992), and A.D. (born in 1994). Father and Mother separated in 2000 and divorced in 2002. A 2002 settlement agreement ordered Father and Mother to share joint legal custody and gave Father primary physical custody.

On September 12, 2008, the Department of Children and Family Services (DCFS) received a referral alleging Father emotionally abused J.D. In a counseling session, Father had called J.D. a loser and told him he "would never amount to anything." J.D. disclosed physical abuse of all three children by Father and stated Father had punched him in the face the prior year.

In an interview with a Glendale police officer, the children stated they were fearful of Father and that he had beaten Mother in the past. The officer removed the minors from Father's care and placed them with Mother.

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

On September 23, 2008, DCFS filed a petition alleging J.D. and A.D. were described under section 300, subdivisions (a) [risk of serious physical harm], (b) [failure to protect], and (j) [abuse of sibling]. On October 27, 2008, it filed a separate petition as to L.D., alleging risk of serious physical harm (subd. (a)) and failure to protect (subd. (b)). The amended petitions alleged the following:

Counts a-1 and a-2 of the amended A.D./J.D. petition and a-2, a-3 and a-4 of the amended J.D. petition alleged Father inappropriately physically disciplined the minors by striking them and throwing objects at them. As to each of the counts, the department alleged substantively as follows: “Such physical discipline was excessive and caused the child unreasonable pain and suffering. Due to the physical discipline of the child by the Father the child refuses to return to the home and care of the Father. Such physical discipline of the child by the Father endangers the child’s physical and emotional health, safety and well-being, creates a detrimental home environment and places the child and the child’s sibling . . . at risk of harm, damage, danger, physical abuse and failure to protect.”

Counts a-3 and b-3 of the amended A.D./J.D. petition and a-1 and b-1 of the amended L.D. petition alleged Mother and Father “have a history of engaging in violent altercations, including the Father striking the Mother. . . . Such violent conduct on the part of the children’s Father against the children’s Mother endangers the children’s physical and emotional health and safety and places the children at risk of physical and emotional harm, damage and danger.”

A detention report prepared by DCFS described Father’s abuse of the children. It related that L.D. said he was careful around Father because of Father’s abusive nature and anger issues, he preferred not to be home when Father was home, and he did not want to return to Father’s home. He said Father hit him in the head, and would hit without warning. J.D. said Father called him “stupid” and “loser” and told him he wished he was never born. He said Father hit him and pulled his ear and once broke a television when he was angry. A.D. said Father would hit them with “any object that was around.”

The report also described Father's past abuse of Mother. L.D. said Father had beat Mother with an iron<sup>2</sup> and once locked them all in a room. J.D. said although he didn't remember the details, he remembered Father abusing Mother in the past.

Mother said Father would beat her in front of the children and would tell her to cover her bruises with makeup. She stated she was fearful of Father, and was hesitant to discuss past incidents because she was concerned it would make Father angry. She said Father had threatened to take away the children, and they once had an altercation because he would not tell her where the children were.

In an addendum to the report, DCFS noted that in a phone conversation between Mother and a social worker, Mother stated, "[Father] has called me and does not want me to bring up the things that you are talking about. He said that I want him to lose his [nursing] license. He wants me to drop this. . . . You know I am still very afraid of [Father]. I ask the kids and they want to stay with me. They say that [Father] hits us like he used to hit you."

The DCFS report assessed the family as "very high risk" due to Father's physical and emotional abuse and determined the "children were at immediate risk . . . ."

At the detention hearing, the court found "[s]ubstantial danger exists to the physical or emotional health of minor(s) and there is no reasonable means to protect the minors without removal." The children were released to Mother.

A jurisdiction/disposition report prepared by DCFS further detailed abuse of the children. L.D. said the abuse towards the children began around the time Father and Mother separated. He said Father hit the children "anywhere he could," "a few times a week," and threw "stuff" at J.D. J.D. said Father hit him with "hands, belts, slippers, feet, hangars [*sic*] . . . hit me with a lot of stuff," and threw books at A.D. When asked if he would be willing to live with Father if Father participated in counseling and apologized, J.D. stated, "he's lying, he's gonna hit us. He'll say that, but deep inside

---

<sup>2</sup> In the DCFS's jurisdiction/disposition report, J.D. said Father threatened, but did not strike, Mother with the iron.

[he's] mad as hell." A.D. said Father stomped on him and hit him in the eye with a hanger. He said his Father "says he'll stop, change," but "never does."

The report also detailed past domestic violence by Father. L.D. said Father once threatened Mother by swinging an iron around by its cord, and also threatened her with a hammer. J.D. said Father blamed his anger on his job and on Mother and would tell her, "I'm gonna kill you, beat you up." A.D. said his Mother "cried everyday cuz he beat her everyday."

Mother stated she is "terrified" of Father. The first time Father threatened her, it was with a baseball bat while they were still dating. After they were married, Father tried to push her down the stairs when she was pregnant and began hitting her after J.D. was born. Father threw things at her—"anything he touched he could throw." Father once hit her so hard she "saw stars, made [her] collapse," then she heard him call his mother on the phone and say, "she's not breathing." Father choked her "all the time," he would tell her to "always smile" or she would "get it again." He permitted her to go only to work or school, told her no one loved her except him, and told her that if she called the police he would kill her before they arrived. He also poured soda and water on her and kicked her.

Finally, there was some indication that Father had abused a girlfriend sometime in the past. J.D. said he heard her scream in another room, "and it appeared to him" Father was beating her. And Mother alleged in a trial brief filed as part of marriage dissolution proceedings in 2001 that the children told her they witnessed Father and the girlfriend "fighting frequently, yelling and cursing. They heard cooking pans being thrown in the kitchen and saw the girlfriend holding a knife at their father." Father and the girlfriend denied any such altercations took place and indicated their relationship ended in 2003.

The report concluded that Mother was "physically, verbally and emotionally abused by [Father], which resulted in her becoming a passive, withdrawn and fearful individual who didn't dare cross Father . . . ," and Father is "a severely emotionally disturbed individual who thrives on exerting power and control over others . . . since he is currently denying ever physically, verbally or emotionally abusing the children and their Mother it appears there will be no change in his behavior in the near future." Attached to

the report was a certification indicating Father had completed 52 anger management sessions and 12 parenting classes.

At the jurisdictional hearing Father pled no contest to inappropriate discipline counts. He contested only the spousal violence allegations, arguing no evidence indicated any such violence had occurred since 2000. The minors' counsel concurred, stating, "It does not appear that the domestic violence between mother and father [is] a current concern . . . ."

The court sustained the petition under section 300, subdivisions (a) and (b), declared the children to be dependents of the court, ordered family maintenance services for Mother and family reunification services for Father, and ordered Father to attend counseling with the children and individual counseling to address his anger issues. Regarding the spousal violence counts, the court found that "there's no reason why [Father is] not in a current relationship with the same exact level of domestic violence, especially in light of his inability to control his anger with the kids. So whether it's with this mother or with someone else, we are going to have to observ[e] to see about the domestic violence. The history seems to me to [be] still very active."

Father timely appealed.

## **DISCUSSION**

In his notice of appeal, Father states he appeals "any and all orders and findings re disposition per the Father and especially the orders of the counseling." However, in his opening brief Father concedes the juvenile court's jurisdictional findings on the counts of physical abuse of the boys and acknowledges that the true findings on those counts bring the children within the jurisdiction of the court. Father challenges the court's rulings only as to the spousal violence counts, a-3 and b-3 of the A.D/J.D. petition and a-1 and b-1 of the L.D. petition, stating he does so "because of the potential impact of the juvenile court's findings on future placement and/or future family court proceedings and/or on his nursing license." DCFS contends this court need not review the sufficiency of the evidence supporting the domestic violence counts because Father does not dispute the other findings, which establish jurisdiction.

A cause of action under subdivision (a) of section 300 requires proof that “[t]he child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian. . . . [A] court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child’s siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm.” The court found a substantial risk of serious future injury existed based on allegations that Father abused each of the three boys. Father does not dispute that substantial evidence supports the finding. Nor does he contest the court’s jurisdiction on this ground.

When jurisdiction is supported by substantial evidence on any ground, the appellate court need not consider the sufficiency of evidence supporting other bases for jurisdiction. (*In re Shelly J.* (1998) 68 Cal.App.4th 322, 330 [“Section 300 contemplates that jurisdiction may be based on any single subdivision.”]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72; see *In Re Jonathan B.* (1992) 5 Cal.App.4th 873, 875-876.) Because we uphold the juvenile court’s jurisdiction based on Father’s abuse of the minors, we need not review the court’s domestic violence findings. We will nevertheless do so.

#### A. Standard of Review

At a jurisdictional hearing, a juvenile court must base its findings on a preponderance of evidence. (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1432.) “On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings. [Citation.] The term ‘substantial evidence’ means such relevant evidence as a reasonable mind would accept as adequate to support a conclusion; it is evidence which is reasonable in nature, credible, and of solid value. [Citation.]” (*Id.* at p. 1433.) “In making this determination, all conflicts are to be resolved in favor of the prevailing party, and issues of fact and credibility are questions

for the trier of fact. [Citation.] In dependency proceedings, a trial court’s determination will not be disturbed unless it exceeds the bounds of reason. [Citation.]” (*In re Ricardo L.* (2003) 109 Cal.App.4th 552, 564.)

#### B. No Evidence of a Substantial Risk of Serious Physical Harm

It is undisputed Father and Mother are not married and do not live together. It is not seriously contended that Father abused Mother after 2000 when they separated and later divorced.<sup>3</sup> The juvenile court nevertheless found the “history” to be “still very active,” stating, “there’s no reason why [Father is] not in a current relationship with the same exact level of domestic violence, especially in light of his inability to control his anger with the kids. So whether it’s with this mother or with someone else, we are going to have to observ[e] to see about the domestic violence.” The court impliedly found the prior domestic violence created a current risk of physical harm.

This implied finding is not supported by substantial evidence.

A child is within the jurisdiction of the juvenile court under subdivisions (a) and (b) of section 300 if he or she “has suffered, or there is a substantial risk that the child will suffer, serious physical harm,” harm that is either “inflicted nonaccidentally upon the child by the child’s parent or guardian” or results from “the failure or inability of his or her parent or guardian to adequately supervise or protect the child . . . .” “[D]omestic

---

<sup>3</sup> DCFS makes a one-sentence argument that evidence exists that Father’s violence toward Mother continues to the present. However, the evidence, an ambiguous statement by J.D. to a social worker that “physical abuse of the mother and children has been occurring ‘ever since they divorced,’” is insubstantial. J.D. and his brothers described only pre-separation violence against mother. And though Mother recited a long history of pre-separation violence and detailed her current fears stemming from it, and in dissolution proceedings alleged pre-separation violence against her and post-separation violence against Father’s girlfriend, the record contains no mention by her of post-separation violence against her. Further, in its dealings with the family DCFS neither explored the issue of ongoing violence against Mother nor argued to the juvenile court that violence against her continued to occur.



violence in the same household where children are living . . . is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. (*In re Heather A.* (1996) 52 Cal.App.4th 183, 194.) Children can be “put in a position of physical danger from [spousal] violence” because, “for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg . . . .” (*Ibid.*)

Here, Father’s abuse of Mother was frequent and severe. A.D. said his mother cried every day because his father beat her every day and choked her “all the time.” Mother continues to be terrified of Father.

We agree with the juvenile court that Father’s violence against Mother was harmful to the children. “Both common sense and expert opinion indicate spousal abuse is detrimental to children.” (*In re Benjamin D.* (1991) 227 Cal.App.3d 1464, p. 1470, fn. 5; see *In re Sylvia R.* (1997) 55 Cal.App.4th 559, 562; Fields, *The Impact of Spouse Abuse on Children and Its Relevance In Custody and Visitation Decisions in New York State* (1994) 3 Cornell J.L. & Pub. Policy 221, 228 [“Studies show that violence by one parent against another harms children even if they do not witness it.”]; Cahn, *Civil Images of Battered Women: The Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand.L.Rev. 1041, 1055-1056 [“First, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents. . . . [¶] Third, children of abusive fathers are likely to be physically abused themselves.” (Fns. omitted.)].)

We also agree Father’s past violent behavior toward Mother is an ongoing concern, especially in light of his inability to control his anger with the minors. “[P]ast violent behavior in a relationship is ‘the best predictor of future violence.’ Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships . . . . Even if a batterer moves on to another relationship, he will continue to use physical force as a means of controlling his new partner.”

(Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash.L.Rev. 973, 978.)

Father and Mother continue to interact, and it is possible he will again use violence against her.

However, though spousal violence in the household presents a physical danger to any children present, no evidence suggests a danger exists that the minors will, “for example . . . wander into the room where [spousal violence] was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg . . . .” (*In re Heather A.*, *supra*, at p. 194.) Mother and Father are not married and do not live together, and there had not been a violent episode between them in the eight years preceding the petition. Even the sketchy allegations regarding Father’s abuse of his girlfriend concerned events occurring in a now defunct relationship seven years before the petition was filed.

DCFS points out that the continued interaction between Father and Mother and the potential for future interactions between him and any new girlfriend creates a potential for future violence. We agree, but the issue is whether that potential for future violence creates a “substantial risk” of serious physical or emotional harm to the children. While it is conceivable that Father will one day throw a fist or object at Mother or some as-yet unknown woman and that one of the children will be present and will be accidentally hit and seriously harmed, speculation is not evidence.

We therefore affirm the juvenile court's orders as they relate to counts a-1 and a-2 of the amended A.D./J.D. petition and a-2, a-3 and a-4 of the amended J.D. petition, but not as to counts a-3 or b-3 of the A.D./J.D. petition or a-1 or b-1 of the L.D. petition.

**DISPOSITION**

The orders are affirmed.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.